

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
FTX TRADING LTD, et al, . Case No. 22-11068 (JTD)
824 Market Street
Wilmington, Delaware 19801
Debtors. .
. Wednesday September 13, 2023
ALAMEDA RESEARCH, LLC, et al, .
vs. . Adv. Proc. No. 23-50145 (JTD)
FTX DIGITAL MARKETS LTD., .
et al. .
.
ALAMEDA RESEARCH, LLC, et al, . Adv. Proc. No. 23-50381 (JTD)
vs. .
SAMUEL BANKMAN-FRIED, et al. .
.
FTX TRADING, LTD., et al, . Adv. Proc. No. 23-50437 (JTD)
vs. .
LOREM IPSUM UG, et al. .
.
(Continued)

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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ALAMEDA RESEARCH LTD., et al, .
vs. . Adv. Proc. No. 23-50411 (JTD)
MICHAEL KIVES, et al. .
.
FTX TRADING, LTD., et al, .
vs. . Adv. Proc. No. 23-50448 (JTD)
SAMUEL BANKMAN-FRIED, et al. .
.

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1 (Proceedings commence at 1:01 p.m.)

2 (Call to order of the Court)

3 THE COURT: Good afternoon, everyone. Thank you.
4 Please be seated.

5 MS. BROWN: Your Honor, I see there is another
6 sign-in sheet with some names on here that may not have
7 gotten up to you. May I approach?

8 THE COURT: Can you hand that up? Yes, that would
9 be great. Thank you.

10 MS. BROWN: Thank you.

11 THE COURT: Thank you.

12 MS. BROWN: Sure.

13 (Pause in proceedings)

14 MS. BROWN: Good afternoon, Your Honor. May it
15 please the Court, Kim Brown from Landis, Rath & Cobb,
16 appearing today on behalf of FTX Trading Limited and its
17 various debtor affiliates.

18 Your Honor, as set forth in the recently filed
19 amended agenda, there are several matters that have been
20 adjourned; those are Items 1 through 5.

21 Items 6 through 11 have been resolved with the
22 matters submitted under certification of counsel.

23 There are, however, three items where orders have
24 not been entered yet. Those consist of:

25 Item 8, the debtors' fifth contract rejection

1 order;

2 Item Number 10, the interim fee application of
3 Morgan Lewis as counsel to the Emergent Debtor;

4 And Item Number 11, the case management order in
5 the FTX Trading v. Samuel Bankman-Fried adversary.

6 THE COURT: I just --

7 MS. BROWN: We're hap --

8 THE COURT: I just entered that order before I took
9 the bench.

10 MS. BROWN: Wonderful. Thank you, Your Honor.

11 So that leaves us with:

12 Item Number 12, which is the coin monetization
13 motion;

14 Item 13, which is a related -- motion related to
15 the investment advisory agreement;

16 Item Number 14, the status conference in the
17 Alameda Research v. Platform Life Sciences adversary;

18 And finally, Item Number 15, which is the interim
19 fee application. And that has been submitted also under
20 certification of counsel. But if Your Honor has any
21 questions, we are, of course, available --

22 THE COURT: I'm --

23 MS. BROWN: -- and ready to answer.

24 THE COURT: I'm still waiting for the -- I haven't
25 received the report from the fee examiner; so, once I get

1 that, I'll be able to --

2 MS. BROWN: Certainly.

3 THE COURT: Yeah.

4 MS. BROWN: We will ensure that that report is
5 transmitted over to you momentarily.

6 And Your Honor, unless you'd prefer otherwise, at
7 this time I'll cede the podium over to Mr. Dietderich, who
8 will be providing a case update.

9 THE COURT: Okay. Thank you.

10 MS. BROWN: Sure.

11 MR. DIETDERICH: Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 MR. DIETDERICH: Andy Dietderich, Sullivan &
14 Cromwell.

15 I have, I think qualified good news, or the
16 beginnings of good news, I hope.

17 We, as Mr. Glueckstein mentioned at the last
18 omnibus hearing, are now, after filing our draft plan July
19 31, in what I would call the "active stage" of plan
20 discussions and negotiation.

21 We released publicly, on Monday morning, a fairly
22 comprehensive deck of materials about the debtors' situation
23 and case, consistent with what we've tried to do in the case,
24 periodically providing more -- kind of more comprehensive
25 public reporting than I think has been standard for debtors,

1 given the number of people who are following what we do.

2 We had meetings, as I think Mr. Glueckstein
3 mentioned, over the last two days, with stakeholders in New
4 York City. Those meetings were very well attended. We had:

5 Representatives of the Official Committee of
6 Unsecured Creditors;

7 Representatives of our ad hoc group of non-U.S.
8 customers;

9 The class action plaintiffs, who filed the
10 adversary complaint on customer property issues, were there,
11 as well, representing both U.S. and non-U.S. customers in
12 that adversary.

13 We had principals, we had advisors.

14 The ad hoc group itself had over \$850 million of
15 claims represented at the meeting. And if you were to
16 include claims by the others, it's well over a billion dollars
17 of customer claims, in particular, represented in those
18 conversations.

19 We talked about a range of issues that were raised
20 in the draft plan, soliciting feedback on its structure and
21 also the specific kind of study questions we do of everyone.
22 And I'm happy to say we have consensus on many issues,
23 including general plan structure. There's still open issues,
24 of course. But we also have consensus, I think, on having a
25 next meeting with the group to try to resolve those open

1 points.

2 We also, I think, have broad consensus on the time
3 table for the case, which is, as previously disclosed by the
4 debtors, still aiming to file an amended plan and disclosure
5 statement in the fourth quarter of this year, marching
6 towards solicitation in the first quarter of next year, and
7 hopefully confirmation as early as -- as early as the fourth
8 -- as the beginning of the second quarter.

9 Those were constructive conversations and I think
10 we really -- our sense, as the debtors, is that people made a
11 lot of progress. Obviously, lots of different opinions on
12 intercreditor issues, in particular, but as I said, a broad
13 consensus on -- that we at least had the right general
14 approach with some variables and some moving pieces to be
15 filled in.

16 The JPLs were not at those plan meetings yet, but
17 we also are -- I'm pleased to report we've had -- from the
18 debtors' perspectives, have had very constructive discussions
19 with the JPLs.

20 So we're looking to have meetings with both the
21 JPLs and with the other stakeholders in the coming weeks.
22 And hopefully, we'll spend the rest of September and October
23 trying to get everyone on the same page, so that we can file
24 a plan that is roughly consensual, hopefully, with most of
25 the people you've heard from so far in the case.

1 Judge Fitzgerald has been very helpful. She is,
2 effectively, on call and available to the extent we need her
3 in mediation, both for the JPL and for plan issues. I'm
4 uncertain at this time whether we will need her or not, but
5 we certainly have discussed schedule with her and timetable
6 with her and available dates, so we'll have that capacity in
7 October, as well, if it's a part of the picture.

8 So I wanted to report that. Again, no concrete
9 news, no great announcement. But I think we -- at least from
10 the debtors' perspective, we think this process of trying to
11 be inclusive and maximizing public information has been --
12 we've had two very good days.

13 THE COURT: Okay.

14 MR. DIETDERICH: So thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 MR. DIETDERICH: I'll cede the podium to Ms.
17 Kranzley, who I think will talk about the coin monetization
18 motion, unless, Ken, you'd to speak.

19 MR. PASQUALE: Quickly, yes.

20 Your Honor, thank you. Ken Pasquale from Paul
21 Hastings for the official creditors' committee.

22 I think, from the committee's perspective, just
23 reacting to what Mr. Dietderich just said, we believe the
24 meetings were productive and substantive, certainly moving in
25 the right direction. I think Mr. Dietderich acknowledged

1 there is a lot of wood to chop and all the parties who were
2 at the meeting are starting to do that chopping.

3 I think, from the committee's perspective, Your
4 Honor, the most important item of consensus is that all the
5 parties agreed to expedite the plan process as much as
6 practicable. What that means for the time line is yet to be
7 seen, but we all agreed the sooner we can get that process
8 rolling, the better.

9 So thank you, Your Honor.

10 THE COURT: Okay. Thank you.

11 MS. KRANZLEY: Good afternoon, Your Honor.

12 I'll address Items Number 12 and 13 on the agenda,
13 which is the coin monetization and the related motion to
14 authorize the debtors' entry and performance into the Galaxy
15 asset management agreement.

16 Your Honor, we filed revised forms of order
17 yesterday evening and this morning. As you see from both of
18 the revised forms of order --

19 THE COURT: And this afternoon.

20 MS. KRANZLEY: Yeah, and this afternoon. Yes,
21 right before the hearing.

22 I think, as you can see from the orders, there was
23 a lot of redlining, but this is reflective of the fact that
24 we have worked very closely with all of the parties, the U.S.
25 Trustee, the creditors' committee, the ad hoc committee,

1 Galaxy, the SEC, and numerous other parties who reached out,
2 both prior to and after we filed the motion.

3 We're pleased to report that, as far as we're
4 aware, everyone's concerns and questions have been addressed
5 in the form of order that we filed right before this hearing,
6 as well as for the Galaxy retention order, the order that was
7 filed last evening.

8 THE COURT: And does that include the two *pro se*
9 claimants who filed letters to the Court, which I took as
10 objections to the motion?

11 MS. KRANZLEY: We have not heard from those *pro se*
12 claimants, they have not reached out to the debtors, and so
13 we have not had any contact with them, other than seeing
14 their letter filed on the docket yesterday evening.

15 THE COURT: Okay. I do have a question about the
16 motion as it relates to those objections from the *pro se*
17 claimants because it's a fundamental issue, I think, when the
18 debtors' motion talks about monetizing the debtors' digital
19 assets.

20 Those objections raise a question about whether or
21 not certain digital assets that the debtor holds are the
22 debtors' digital assets. How is that being addressed by the
23 motion?

24 MS. KRANZLEY: Your Honor, the debtors' view is
25 that the digital assets that we are selling, which may

1 include the assets that are alleged in those claimants'
2 objections, are assets of the debtors; that, from the
3 debtors' perspective, those claimants have not asserted or
4 demonstrated any evidence or commenced any actions to
5 demonstrate their property interest in that property or the
6 fact that that property interest is traceable specifically to
7 them.

8 We have also had extensive discussions with both
9 the ad hoc committee, as well as the class action plaintiffs,
10 on these points, and our understanding is that they both
11 support the relief that we've requested.

12 THE COURT: Wasn't there a -- and correct me if I'm
13 wrong. Wasn't there an adversary proceeding initiated by the
14 ad hoc committee about whether or not the digital assets
15 belonged to the debtors or not?

16 MS. KRANZLEY: Yeah. Yes, Your Honor.

17 THE COURT: And that hasn't been resolved yet.

18 MS. KRANZLEY: That has not been resolved, Your
19 Honor. And we understand that they support the relief that
20 we're seeking in this motion.

21 THE COURT: Well, I'm -- I need to hear from the ad
22 hoc committee. I don't -- how is that so? How do I -- how
23 do I say I can enter this order that the debtors can just
24 sell assets that might not belong to them, according to your
25 complaint?

1 MR. HARVEY: Your Honor, Matthew Harvey from
2 Morris, Nichols, Arsht & Tunnell on behalf of the Ad Hoc
3 Committee of Non-U.S. Customers of FTX.com.

4 Your Honor, I don't -- as the debtor opened the
5 hearing with, there were productive discussions over the past
6 couple of days on the substance and context of a plan, as
7 well as, as the committee highlighted, the timing of a plan.
8 And we are hopeful these issues will be resolved in a value-
9 maximizing way for FTX.com customers in connection with a
10 plan.

11 Without prejudicing those discussions and the
12 confidentiality of those discussions, you know, we are
13 supportive of this motion at this time as a way to preserve
14 and maximize value for the debtors' estates, given the
15 information we've been privy to and given the status of these
16 cases.

17 Now I'll pause, too, Your Honor, and see if my co-
18 counsel, Erin Broderick, who's on the phone, has anything to
19 add on that.

20 THE COURT: Well, let me ask. Is there a way to
21 know -- I assume there is because we're talking about crypto
22 assets here, which are supposed to be traceable. So are
23 these assets traceable to someone who specifically deposited
24 them with FTX Trading?

25 MR. HARVEY: I'm going to defer to Mr. Dietderich

1 on that because I think he's going to have a stronger view --
2 strong view on it, one way, and then I can respond, as well,
3 Your Honor.

4 THE COURT: All right.

5 MR. HARVEY: So I'll cede the podium to the debtor
6 in the first instance, and then I can rise, to the extent
7 further necessary.

8 THE COURT: Okay.

9 MR. DIETDERICH: To say that's a good question,
10 Your Honor, would be an understatement.

11 The easiest way to address this is to acknowledge
12 that the customer letters don't actually assert -- identify
13 to us any particular crypto owned by the customers.

14 Generally, as we've said before, customers have
15 deposited -- made deposits on the exchange. The exchange --
16 when we say "made deposits on the exchange," what we mean is
17 the customer sent usually fiat currency of some sort to the
18 bank, sometimes crypto, but usually fiat currency, and had an
19 app on their phone or a computer terminal that showed them
20 that they had an account to which some cryptocurrency on the
21 -- at least on the screen related.

22 The underlying facts of the situation, as I think
23 we've said publicly and to the Court previously, are that the
24 assets that are available to the debtors as property of the
25 estate do not match what's on the screens with the accounts.

1 So, absent a very specific assertion by customers, there is
2 no way for us to trace individual cryptocurrency to
3 individual customers. It's all part of one pool.

4 There are assets that are associated with the
5 exchange, what we call the "dot-com customer pool" and the
6 "U.S. pool." But they don't necessarily match customer
7 entitlements.

8 And there is, of course, most of our assets are not
9 in those pools, but in various other debtors around our
10 structure that also don't match those individual customer
11 entitlements.

12 The -- I think, as Ms. Kranzley said, the most
13 important thing is that, to the extent the customers have an
14 objection to the relief that we're seeking today, the burden
15 is on them to show an interest in property or to specify with
16 particularity what property of ours they're actually stating,
17 you know, would belong to them. And at least on our review
18 of the letters, we don't see an allegation of specificity
19 that we can respond to.

20 Even if they did, however, say I owned exactly --
21 you know, I think I had an account with 27 bitcoin in and
22 thirty-two eighth and three, you know, soul [sic], we still
23 would not necessarily have those underlying assets. And none
24 of the assets that we have are actually attributable to
25 individual customer names. It's all part of one big,

1 general, blended pool.

2 So, on that basis -- on that basis, at least our
3 reading of this is that, although there's potentially
4 interesting, I'll call them "constructive trust arguments" on
5 behalf of the customers as a group, when we dispose of
6 cryptocurrency in this motion or otherwise, we will be making
7 sure we have books and records about where it came from.

8 So, if the cryptocurrency was in the customer pool,
9 we'll keep track of that. And those proceeds will be
10 available to customers, classification in our plan, et
11 cetera, subject to confirmation. If the crypto is in the --
12 kind of the general pool or Alameda or one of our other
13 debtors, we'll note that and the proceeds will be
14 attributable to that there.

15 So, again, to the extent the customers have an
16 interest in property as a group, we'll be able to say where
17 the proceeds will go. But we're now to a point where we
18 think there's any evidence whatsoever that a customer has a
19 unique entitlement to the particular cryptocurrency we're
20 selling.

21 We're not, for example, selling NFTs, which are
22 individually unique. We're only selling these -- you know,
23 these assets that are, at most, kind of a fungible bulk, if
24 that makes sense.

25 THE COURT: Well, I guess I'm -- I understood from

1 the beginning of the case that customers could deposit their
2 crypto assets with the debtor, at least FTX Trading, and that
3 those -- there was a term of service that said that those
4 crypto assets remained the assets of the party who was
5 depositing them and they did not become the property of FTX
6 Trading. Is that not correct?

7 MR. DIETDERICH: It's not precisely correct. I
8 mean, I think people can read the terms of service for the
9 U.S. and internationally in different ways. There's
10 contradictory language in those terms of service, as I think
11 has been pled in the --

12 THE COURT: No, I know there's -- yeah, there's
13 issues about it. But my concern is that issue hasn't been
14 resolved.

15 MR. DIETDERICH: Well, no, that issue does not --
16 that issue has not been resolved. But when you -- when --
17 and it is true that customers could deposit cryptocurrency,
18 just like they could deposit cash. But whether they were
19 depositing cash or cryptocurrency, it really just appeared as
20 a number on a screen. The underlying assets are not
21 traceable to the individual customers, if that makes sense.

22 So it's not like there was each customer -- if you
23 -- if Sally had deposited three bitcoin, we don't have an
24 account that says three bitcoin for Sally. If Joe had
25 deposited three bitcoin, we don't have an account that says

1 three bitcoin for Joe. What we have is some bitcoin, some in
2 the customer kind of pool and some in the Alameda pool, but
3 not attributable to individual customers.

4 And so, when we dispose of this, we'll be turning
5 it into cash, effectively, and the cash will be available for
6 distribution pursuant to the plan. And you know, that's kind
7 of the reality of the situation.

8 If that weren't the reality of the situation, the
9 customer, you know, had a tracing claim, right? So what is
10 really the allegation here is not that, you know, the
11 bitcoin, which is fungible, which is -- it's more of an
12 allegation of, you know, there's something here that we
13 should trace. That tracing argument, of course, is infinite
14 in its capacity. That would apply to every asset in the
15 estate at some level.

16 THE COURT: But a customer could say I know I have
17 three bitcoin on the exchange, I might not know which
18 particular bitcoin it is, but there's three bitcoin on the
19 exchange that belongs to me. That's their argument.

20 MR. DIETDERICH: Right.

21 THE COURT: And I want it back, I want the bitcoin
22 back, I don't want the cash, I want the bitcoin back because
23 I think that's more valuable to me.

24 MR. DIETDERICH: Right.

25 THE COURT: How do I deal with that?

1 MR. DIETDERICH: Well, I think that, again, I would
2 say that the burden of proof is on the customer to prove an
3 interest in the property, and there's been not -- neither a
4 specific allegation, nor the assertion of an interest in
5 property.

6 THE COURT: Okay. Let me hear from the committee
7 because you guys represent these people. What's the
8 committee's view on all of this?

9 MR. GILAD: Good afternoon, Your Honor. Erez Gilad
10 of Paul Hastings on behalf of the official creditor
11 committee.

12 I think it's fair to say that, until now, the
13 committee hasn't adopted a formal view. We haven't inter-
14 pled, as of yet, in the pending adversary proceeding that
15 Your Honor alluded to earlier. I would say this:

16 Building off of what counsel just mentioned, the
17 assertion fo a property interest is specific to the specific
18 property held. So, stated differently, it's a customer-by-
19 customer, account-by-account basis.

20 And just to amplify the point that counsel was
21 making, so far, there's only been one formal pleading as to
22 the assertion of a property interest, which is that suit that
23 was referenced by Your Honor, the adversary proceeding filed
24 by the ad hoc committee. That group, though, is in support
25 of this motion. So they are clearly comfortable that, net-

1 net, the relief sought in the motion yields, I would say an
2 incremental value to their position relative to the estate.

3 The overall concern that we have is that the
4 debtors have a substantial, multi-billion-dollar token
5 portfolio available to them right now, and they want to be in
6 a position to maximize that value, to de-risk their token
7 portfolio, and ultimately to dollarize [sic] the tokens, so
8 that they can maximize cash distributions at the end of the
9 case.

10 And in order to preserve -- in order to implement
11 best practices, they retained an investment advisor to do
12 that over an appropriate period of time, utilizing a maximize
13 -- a value-maximizing strategy. And to do that, we need to
14 begin that process now.

15 Were the debtors forced to wait on the relief
16 that's being requested, they would be forced then, in order -
17 - if they were to try and facilitate cash distributions to
18 the estate, they would be forced to monetize a significant
19 portion of digital assets over a shorter period of time,
20 which we are concerned could result in less optimal pricing.

21 So, from our perspective, we do think the Court has
22 before it the necessary support from the parties that have
23 actually asserted the actual property interest. And in terms
24 of what is in the overall net benefit of the estate, we do
25 think the relief is appropriate at this time.

1 THE COURT: Okay. Thank you.

2 MR. GILAD: Thank you, Your Honor.

3 THE COURT: Did the ad hoc committee want to say
4 anything further?

5 MR. HARVEY: Thank you, Your Honor. And again, for
6 the record, Matthew Harvey from Morris, Nichols, Arsht &
7 Tunnell on behalf of th ad hoc committee.

8 While we don't necessarily agree with everything
9 the debtors said about the traceability of property interests
10 or the creditors' committee, in the context of where we are
11 with our litigation, including if you -- and Your Honor
12 probably has not studied our complaint, but including that
13 the -- one of the ways in which the complaint is pled is in a
14 -- what I will colloquially call to as a "pool" or a "common
15 pool" trust theory, based on the issues the official
16 committee highlighted about the need to dollarize these
17 assets and liquidate them in a market-favorable way and over
18 an appropriate period, with the assistance and expertise of
19 experts in the area, we are supportive of the motion at this
20 time.

21 THE COURT: Okay. All right. Let me ask, before I
22 come back to you, Mr. Dietderich, I have -- I think one of
23 the *pro se* claimants is on the line here. He's listed as
24 "Sam Customer." Are you one of the *pro se* claimants who
25 filed the letter with the Court?

1 (No verbal response)

2 THE COURT: Mr. Sam, can you hear me?

3 (No verbal response)

4 THE COURT: He's got his hand raised.

5 Can you give me hosting rights, too, by the way?

6 Okay. He's not going to answer.

7 All right. Is the -- are any of the -- are either
8 of the two *pro se* claimants who filed letters with the Court
9 on the line?

10 (No verbal response)

11 THE COURT: All right. I hear nothing.

12 Okay. Mr. Dietderich, back to you.

13 MR. HARVEY: Your Honor, one thing I would just add
14 -- again, Matthew Harvey from Morris Nichols on behalf of the
15 ad hoc committee, for the record -- is, to the extent that
16 any of the customers, on the line or otherwise, who have had
17 issues with us or reached out to the Court or sent letters,
18 have questions, the counsel to the ad hoc committee and the
19 ad hoc committee's advisors are available for folks to
20 contact and, you know, we're happy to engage with people
21 within the constituency. That's been part of what we've
22 tried to do. And we've been very open about taking phone
23 calls that come in. So I just wanted to get on the record
24 that, if folks are on the line and have questions, they can
25 reach out to me or my co-counsel at Eversheds, and we're

1 happy to engage with those folks.

2 THE COURT: Okay. Excellent. Thank you.

3 MR. DIETDERICH: Your Honor, I have a couple of
4 practical solutions, if you're -- if possible.

5 So the first is that we think we can do this
6 because the burden, as I said, is on the customer to
7 specifically allege an interest in property, and they have
8 not.

9 We would note that 363(f)(4) allows us to sell
10 property that's subject to a bonafide dispute, so the Code
11 does contemplate the idea that, if property is disputed, the
12 estate can go ahead and sell that over the objection.

13 But again, the -- these customers clearly had
14 notice of today's proceeding, enough notice to write a
15 letter, and they have not even identified the specific
16 property that they're alleging an interest in. So we think
17 that probably stands.

18 It is possible for us, as the debtor, to
19 potentially identify what crypto would belong to these folks.
20 We have not conducted that process. But you know, another
21 possibility is to go ahead and do that and potentially carve
22 it out from the relief. We'd rather not do that because it
23 ends up being a slippery slope that's potentially unfair to
24 other customers.

25 THE COURT: All right. Okay.

1 MR. DIETDERICH: Thank you.

2 THE COURT: Thank you.

3 All right. Anything else?

4 (No verbal response)

5 THE COURT: All right. Well, then let -- oh.

6 Counsel?

7 MS. KRANZLEY: I was just going to see if you had
8 any questions about any of the blacklining.

9 THE COURT: No. No.

10 MS. KRANZLEY: Okay.

11 THE COURT: I did have an opportunity to review it
12 before I took the bench.

13 Well, given that the only outstanding objections
14 are the two letters, which I entered on the docket and took
15 to be objections from certain *pro se* claimants, and neither
16 of those *pro se* claimants have appeared to establish their
17 ownership interest in any particular bitcoin that the debtors
18 might hold or cryptocurrency that the debtors might hold, and
19 that all of the other parties-in-interest have agreed to the
20 form of order that is requested to be entered, I will
21 overrule the two *pro se* objections and I will approve the
22 order.

23 MS. KRANZLEY: Thank you very much, Your Honor.

24 Your Honor, related to Item Number 12 is Item
25 Number 13, the debtors' motion for authorization to enter

1 into and perform the Galaxy agreement order. And that was
2 filed last evening, along with the revised version of the
3 investment management agreement. That, likewise, has and
4 incorporates all of the comments from all the parties. And
5 so we understand that that resolves everybody's issues and
6 concerns, as well.

7 THE COURT: Okay. And I have reviewed that.

8 And anyone else want to be heard on that before we

9 --

10 MS. SARKESSIAN: Your Honor, for the record, Juliet
11 Sarkessian on behalf of the U.S. Trustee.

12 I do believe that the changes that were made to
13 that order do resolve the U.S. Trustee's issues.

14 I actually rise, primarily, Your Honor, to
15 introduce you to a new trial attorney with our office, his
16 name is John Lipshie.

17 THE COURT: Welcome.

18 MR. LIPSHIE: Thank you.

19 MS. SARKESSIAN: And Your Honor, he will be working
20 on the FTX cases going forward, so you will be seeing him in
21 your courtroom --

22 THE COURT: Okay.

23 MS. SARKESSIAN: -- well, of course, and in other
24 cases, as well.

25 THE COURT: All right. Thank you.

1 MS. SARKESSIAN: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Anyone else wish to be heard?

4 THE COURT: All right. I'm satisfied that the
5 motion is appropriate and I will enter that order.

6 MS. KRANZLEY: Thank you, Your Honor.

7 THE COURT: Do we have the final versions of those
8 both uploaded on the --

9 MS. KRANZLEY: Yes, they've been uploaded.

10 THE COURT: Okay. We'll get those out. Okay.

11 Next up?

12 MR. GLUECKSTEIN: Good afternoon, Your Honor.

13 Brian Glueckstein, Sullivan & Cromwell, for the debtors.

14 The next item on the agenda, Your Honor, is Item
15 14, which is the initial pretrial conference in the Alameda
16 v. Platform Life Sciences, et al adversary proceeding.

17 Your Honor, with respect to this case, we have
18 endeavored, as we've tried to do with all of the adversaries
19 that have been filed so far, and we will continue to do, to
20 negotiate and submit to the Court consensual scheduling
21 orders to obviate the need for unnecessary hearings and
22 conferences before the Court.

23 Your Honor, we're here today because we did submit
24 a proposed case management plan and scheduling order in this
25 adversary proceeding that was negotiated with all defendants

1 and includes all of the necessary initial schedule and
2 milestones.

3 The issue, Your Honor, simply is one of the
4 defendants in the case, Platform Life Sciences, informed us
5 that they would not agree and sign on to the scheduling
6 order. As we understand it -- and there's a provision that
7 addresses a negotiated briefing schedule that was
8 contemplated in this order -- that Platform Life Sciences
9 intends to file a motion to dismiss on the grounds that the
10 Court lacks personal jurisdiction over this defendant.

11 And as we understand it, they don't want to be
12 bound by the scheduling order and participate in the case
13 with respect to the milestones that are scheduled to start
14 going forward in November. We have initial disclosures and
15 discovery to commence on November 10th in this adversary
16 proceeding.

17 It's the debtors' position, Your Honor, that the
18 scheduling order provides for a reservation on no waiver of
19 jurisdiction. We don't believe that this scheduling order
20 binding all parties would prejudice this defendant for any
21 motion that it will make with respect to any of its
22 jurisdictional arguments.

23 We do think it's important that this case stay
24 coordinated with respect to the defendants; that, when we hit
25 these milestones in November, everybody be subject to the

1 initial phases of discovery.

2 The Court, under the schedule that's proposed and
3 that was requested by Platform Life Sciences, would have
4 their motion to dismiss fully briefed by November 20th. And
5 we know the Court will address that promptly thereafter. To
6 the extent that that motion is not granted, we don't believe
7 that it makes sense for this defendant to be on a different
8 schedule.

9 So, very simply, Your Honor, we would like and
10 request, respectfully, that the scheduling order be entered
11 in the case, but be done so with respect to all defendants.

12 THE COURT: Okay. Thank you.

13 Mr. Kornfeld, I see you raised your hand. Are you
14 on for Platform Life Sciences?

15 MR. KORNFELD: I am, indeed, Your Honor. Thank you
16 so much. For the record, Alan Kornfeld, Pachulski, Stang,
17 Ziehl & Jones for, actually, two defendants. There's
18 Platform Life Sciences Canada --

19 THE COURT: Mr. Kornfeld, I'm going to ask you to
20 maybe -- you're a little hard to hear. I can hear you okay,
21 but I think other people in the courtroom might not be able
22 to hear you.

23 MR. KORNFELD: How is this, Your Honor? Is this
24 better?

25 THE COURT: No, it's about the same. You might

1 have to raise the volume on your microphone.

2 MR. KORNFELD: That's what I'm going to do.

3 (Pause in proceedings)

4 MR. KORNFELD: How is this, Your Honor?

5 THE COURT: That's better.

6 MR. KORNFELD: Thank you so much.

7 So, as I was saying, Your Honor, there are actually
8 two Platform Life Science defendants that are merged together
9 in Paragraph 21 of the complaint. I represent both of them.
10 There's Platform Life Science Canada and there's Platform
11 Life Sciences Delaware.

12 As Mr. Glueckstein said, usually, a case management
13 order is something that is negotiated, it's resolved, it ends
14 up being noncontroversial. The situation is different here.
15 And by way of background, let me try and quickly explain why
16 it's different.

17 Platform Life Sciences, as its name implies, is
18 incorporated in Canada. It's a life science company. It
19 does medical clinical trials in developing and medium-income
20 countries. It's designed to provide clinical trials in those
21 countries that, with respect to the world of clinical trials,
22 are marginalized.

23 Platform Life Science Delaware is a wholly owed
24 subsidiary of Platform Life Science Canada. It has no
25 functional operations other than to operate (indiscernible)

1 processor for 11 U.S. employees.

2 According to the complaint, Platform Life Science
3 Canada received 53,250,000 in funding by wire to its Canadian
4 bank. The plaintiffs that provided the funding are Alameda,
5 a British Virgin Islands corporation, and FTX, which is an
6 Antigua and Barbudan corporations. The transfers to Canada
7 came from Alameda and FTX bank accounts in Antigua, Barbuda,
8 and (indiscernible)

9 No part of the transactions or allegations in the
10 complaint against PLS Canada have a connection to the U.S.
11 The transactions all occurred outside of the U.S. No acts
12 that give rise to the allegations against PLS Canada happened
13 in the U.S.

14 What we plan to do with respect to motion practice
15 on behalf of PLS Canada is to file a 12(b)(2) motion on
16 Friday, and we will keep the schedule that is set forth in
17 the pretrial order, in the case management order. And we
18 will complete briefing pursuant to that schedule. With
19 respect to PLS Delaware, we will file a 12(b)(6) motion.

20 Now how does this background relate to the case
21 management order? The problem we face is the problem of
22 waiver of the personal jurisdiction defense. The Third
23 Circuit, in In Re Asbestos Products Liability Litigation, a
24 2019 case, and the Supreme Court in, for example, Insurance
25 Corp. of Ireland v. Compagnie des Bauxites, which is a 1982

1 Supreme Court case -- and for the record, the Asbestos
2 Products Liability Litigation case is at 921 F.3d 98.

3 The Third Circuit explained in that case that the
4 law is clear with respect to personal jurisdiction that words
5 alone are insufficient to preserve a personal jurisdiction
6 defense where conduct indicates waiver. And defendants can
7 forfeit the defense, even though that conduct is involuntary.

8 And the Court goes on to say, in essence, words
9 don't matter. Saying I preserve, I want to preserve, I
10 reserve all rights with respect to personal jurisdiction
11 doesn't do it. The Court said:

12 "Behavior that is consistent with waiver, and which
13 indicates an intent to litigate the case on the
14 merits, is sufficient to constitute waiver,
15 regardless of whether the parties also express an
16 intent to preserve the defense."

17 Well, we've expressed to the debtor the intent to
18 preserve the defense, and we'll express that to the Court in
19 the motion that will be filed on Friday.

20 But turning to the case management order, the case
21 management order explicitly -- not implicitly -- explicitly
22 requires PLS Canada to litigate the case on the merits. And
23 if we sign on to that case management order, we have
24 indicated the intent to litigate on the merits. We've
25 (indiscernible) on the merits. We've said we're going to

1 make initial disclosures, we're going to engage in document
2 discovery, we're going to engage in deposition discovery,
3 we're going to a mediation, we may make a summary judgment
4 motion. We're litigating on the merits. And when we sign on
5 to that order, we're indicating an intent to litigate on the
6 merits.

7 So, despite the words in a case management order,
8 which arguably, if not somewhat weakly, seem to say there is
9 some preservation of jurisdiction, but it's more -- it's --
10 when you look at the reference, it's more geared
11 (indiscernible) jurisdiction than personal jurisdiction. But
12 even assuming --

13 UNIDENTIFIED: (Indiscernible)

14 MR. KORNFELD: Even assuming the words in the case
15 management order are a reservation of rights, that is not
16 enough.

17 So here's the workable solution to this conundrum
18 that we're in. We're going to comply with the briefing
19 schedule that is set forth in the case management order.
20 That briefing schedule, subject to the Court's availability,
21 would allow us, again, with court approval, to have a hearing
22 on the motions in the December -- on the December omnibus.

23 Frankly, after that hearing, we can have a status
24 conference. We can figure out where we are, based on what
25 the Court decides, and either the case, at least with respect

1 to PLS Canada, may be someplace else; or, if it's in this
2 court, we may not have the waiver problem that we would have
3 at the present time.

4 So that's our explanation of why we are where we
5 are here. And the proposed solution doesn't appear to
6 prejudice the debtors because the case manager with respect
7 to other parties pushes briefing out until later in this
8 year. The only thing we would really not be doing that is
9 contemplated in the case management order is making our
10 initial disclosure and engaging in the document discovery.

11 Your Honor, I -- that's the reason, again, we are
12 where we are. I'm happy to answer any questions.

13 THE COURT: Well, let me hear from the debtors, see
14 what their response is.

15 MR. GLUECKSTEIN: Thank you, Your Honor. Brian
16 Glueckstein for the debtors.

17 So I'm not going to respond on the merits of the
18 personal jurisdiction motion. We'll address that in due
19 course. Suffice it to say we disagree. We believe the Court
20 does have jurisdiction over the PLS Defendants.

21 With respect to this issue, Mr. Kornfeld hits on
22 the issue on the head. We believe that -- and this could be
23 briefed, if Your Honor would like. But we do believe that
24 the case law is clear that it is a question of what is the
25 level of engagement of the defendant.

1 The schedule that's been sent out here -- and the
2 Third Circuit case in Asbestos Products Liability litigation
3 made very clear, when you read that case, Your Honor, that
4 the facts and circumstances of that case were very unique to
5 that situation.

6 You know, here, the question is whether or not all
7 the defendants will be commencing the litigation, pursuing
8 the initial disclosures, and importantly, starting discovery
9 on schedule.

10 The schedule that's reflected in the motion for the
11 briefing of the 12(b)(2) motion was agreed to in the context
12 of these defendants being part of this schedule. To the
13 extent that they are not going to be part of this schedule,
14 Your Honor, we would like their motion heard more swiftly and
15 on the schedule -- we would actually propose that they
16 proceed quicker on the schedule proposed -- set forth in the
17 rules.

18 But Your Honor, we think that all defendants should
19 proceed together, document discovery should commence
20 together. The service and response to document discovery
21 while their motion is being considered by the Court and heard
22 we do not believe waives their defense. We think that
23 defense is preserved. And we think that it's important for
24 this case, for all defendants, to -- and for the plaintiffs,
25 to begin moving this case forward in lock step together, Your

1 Honor. Thank you.

2 THE COURT: Well, I agree. I think the motion --
3 Mr. Kornfeld, you said you're going to file your motion to
4 dismiss on Friday, this Friday?

5 MR. KORNFELD: Yes, Your Honor. Yes, Your Honor.

6 THE COURT: Then why can't we move up the -- speed
7 up the briefing and get this heard before the end of October
8 --

9 MR. GLUECKSTEIN: From --

10 THE COURT: -- instead of the end of November.

11 MR. GLUECKSTEIN: From our perspective, Your Honor,
12 that's what we would propose to do. If -- we think the
13 simplest thing to do is, as we proposed, to have everybody
14 bound by the order and to proceed by the schedule.

15 But I agree, Your Honor. If the Court and Mr.
16 Kornfeld want the Court to consider their 12(b)(2) motion in
17 advance of the commencement of the schedule, which has a --
18 the kickoff, effectively, to the substantive dates in here is
19 November 10th -- then we would like a briefing schedule that
20 would allow that motion to be considered by the -- as Your
21 Honor says, by the end of October. Under the rules, we could
22 have it briefed as quickly as October 6th, we could extend
23 that slightly.

24 But we don't want to be in a situation where, if
25 that motion, as we believe it will be, is denied, that this

1 defendant is on a different track.

2 THE COURT: Okay. So when are you proposing you
3 would file your response to the motion to dismiss?

4 MR. GLUECKSTEIN: We could -- I mean, you know,
5 it's 14 days under the rules. We could do that, Your Honor,
6 we could extend that by a week and extend their reply
7 deadline a week out and get us to the middle of October. But
8 we are happy to proceed on the schedule that would be
9 provided. If we want to -- if they file it on Friday, we
10 could respond in 14 days on the 29th.

11 THE COURT: Okay. Why don't we do that? Response
12 in 14 days. Reply brief would be due when, the 6th?

13 MR. GLUECKSTEIN: It would be the 6th under the
14 rules, Your Honor, yes.

15 THE COURT: So we'll do that as the schedule for
16 the briefing on the motion to dismiss for personal
17 jurisdiction. And we'll have a hearing on -- let's do
18 October 26th. Well, let's do -- we can do it before that.
19 Let's do October 19th at 10 a.m.

20 I will be kicked out of my courtroom that week
21 because the judges -- we have seven courtrooms and eight
22 judges. So I'll be -- I'll either be in a different
23 courtroom or we'll do it -- since it's only oral argument, we
24 can do it virtually. We'll do it that way.

25 MR. GLUECKSTEIN: That is fine with the debtors,

1 Your Honor.

2 THE COURT: Okay.

3 MR. KORNFELD: That's fine with us, Your Honor.

4 Thank you so much.

5 THE COURT: All right. And then we'll deal with
6 the scheduling order once we get past the motion.

7 MR. GLUECKSTEIN: Okay. That's fine, Your Honor.

8 THE COURT: Okay.

9 MR. GLUECKSTEIN: Thank you very much.

10 THE COURT: All right.

11 MR. KORNFELD: Thank you, Your Honor. May I be
12 excused?

13 THE COURT: Yes. Thank you.

14 MR. KORNFELD: Thank you.

15 THE COURT: All right. Anything else for today?

16 MR. HANCOCK: Your Honor, very briefly. Mark
17 Hancock of Godfrey & Kahn on behalf of the fee examiner.

18 Obviously, we have Item 15 on the agenda, which are
19 the interim fee applications. As Ms. Brown said, there's
20 been a certification of counsel filed.

21 The fee examiner's report was also filed on
22 September 5th at Docket 2427. I think the agenda didn't have
23 a reference to that. I'm not sure whether it made it in the
24 electronic binders that debtors provided, but it is there.
25 And I know Ms. Brown can get you a copy of that.

1 I can answer any questions you may have about the
2 fees and/or process. But the fee examiner is also here and
3 can make a couple of brief remarks here.

4 THE COURT: If you'd like to, yeah, that would be
5 fine. I know we're skipping over some of the fee requests
6 this time around, right? For some reason.

7 MS. STADLER: Thank you, Your Honor. Katherine
8 Stadler of Godfrey & Kahn, the fee examiner in these
9 proceedings.

10 Yes, we are skipping over -- or I should say
11 holding in abeyance two interim fee applications because we
12 are in productive discussions with those professionals,
13 exchanging information that may well resolve the concerns
14 that we have articulated. If that should happen, we will
15 work with local counsel for the debtors to submit appropriate
16 orders under a certification process or in some other way if
17 those issues get resolved.

18 I did want to note, just because we're -- we came
19 all the way here from Wisconsin, that I should stand up and
20 introduce myself and just tell you a little tiny bit about
21 our process.

22 The fee examiner process, in my view, is designed
23 for one primary purpose, and that is to make the Court's job
24 in assessing reasonableness and necessity easier. If there
25 is anything that we could do that would make that job easier

1 that we are not doing, we are happy to hear that feedback
2 from you, whether that's data, teeing up disputed issues on a
3 realtime basis, reporting formats. Anything we can do to
4 make that job easier, we're happy to do.

5 The issue of the reserved issues -- and since you
6 didn't get the report for some reason, you probably haven't
7 read about this yet. But what we attempted to do in our
8 current report is to identify specific issues on which the
9 fee examiner reserves rights to revisit the issue at the
10 conclusion of the case or at a later -- at a later interim
11 fee hearing.

12 The reason for that is because of my assumption --
13 and my dad told me never to do that -- but I assumed that the
14 -- Your Honor and the parties would prefer to have disputed
15 fee issues dealt with when there aren't so many other moving
16 parts in the case.

17 I also believe that there is a decent chance of
18 some of these reserved issues that, watching the case play
19 out over time, could change my view and would alleviate the
20 need for any contested proceeding at all.

21 So, for that reason, we have tried to delineate in
22 our report, with respect to those applications that are
23 recommended for approval, that there are some issues in those
24 applications that we do need to continue to address at an
25 appropriate time.

1 Of course, everyone always has the right to object
2 to a final fee application and all issues are technically
3 always reserved. But the course of dealing of parties in
4 these Chapter 11 cases tends to be the expectation that
5 issues will be aired and resolved on an interim basis. Here,
6 the interim fee periods are only 3 months long and our
7 reporting cycle is 45 days. So it doesn't give a lot of time
8 for a long view of some issues that really require a long
9 view.

10 With that, I just wanted to point out to Your Honor
11 that that's the way we have structured this report and our
12 process. We're trying to be thorough without being picayune.
13 We're trying to be responsive without being beholden to
14 professionals or anyone else. And we're trying to be
15 thorough, but not overblown.

16 And if, at any point, we're not walking that line
17 correctly, I hope Your Honor will let us know and know that
18 we will respond appropriately.

19 THE COURT: Okay. Thank you.

20 No, I'm happy with the reports that I've seen so
21 far. I think everything is going appropriately. And I think
22 your approach is the right approach, so that we don't have to
23 -- you know, we can reserve some of these issues, if we need
24 to, for the long term, as you said, and just so we're not
25 getting jammed up on fee disputes in the middle of other

1 issues that are going on in the case. So I'm happy with the
2 way things are going.

3 So I'm not sure what happened with the report. I
4 don't know why I didn't -- it wasn't brought to my attention,
5 I don't know, somehow, but we'll figure that one out.

6 MS. STADLER: Do you want to address that, Kim?

7 MS. BROWN: Sure.

8 MS. STADLER: Okay. Thank you. I'll step down.
9 Thank you, Your Honor.

10 THE COURT: Okay. Thank you.

11 MS. BROWN: Good afternoon, Your Honor. Kim Brown
12 from Landis, Rath & Cobb.

13 The report was submitted in connection with the
14 interim fee binder and index that was provided last
15 Wednesday.

16 THE COURT: Okay.

17 MS. BROWN: And I think what might be helpful going
18 forward, if Your Honor would like, perhaps, once the fee
19 report is filed, we submit that separately, and then also
20 include it with respect to the -- you know, the binder, so
21 you have it in both places, but it doesn't get lost in the
22 shuffle.

23 And since the hearing has started, we've also
24 emailed a copy to chambers and included Ms. Stadler and Mr.
25 Hancock on that --

1 THE COURT: Okay.

2 MS. BROWN: -- transmission.

3 THE COURT: All right. Thank you. That's fine.

4 That would be -- that would work better, I think.

5 MS. BROWN: Certainly.

6 THE COURT: Yeah.

7 MS. BROWN: Happy to do it.

8 THE COURT: Because a lot of paper gets filed in
9 this one.

10 MS. BROWN: I am very aware, Your Honor, and happy
11 to assist chambers however we can.

12 THE COURT: All right. Thank you.

13 MS. BROWN: Thank you.

14 THE COURT: All right. Anything else for today?

15 (No verbal response)

16 THE COURT: All right. Thank you all very much. I
17 appreciate the update, I appreciate the arguments of counsel.
18 And we are adjourned. Everybody have a good weekend.

19 COUNSEL: Thank you, Your Honor. Thank you, Your
20 Honor.

21 (Proceedings concluded at 1:51 p.m.)

22 *****

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

A handwritten signature in dark ink, appearing to read 'Coleen Rand', is written over a horizontal line.

September 13, 2034

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

For Reliable